

## Department of Homeland Security

## § 9701.357

### § 9701.353 Setting pay upon promotion.

(a) Except as otherwise provided in this section, upon an employee's promotion, DHS must provide an increase in the employee's rate of basic pay equal to at least 8 percent. The rate of basic pay after promotion may not be less than the minimum rate of the higher band.

(b) DHS will issue implementing directives providing for an increase other than the amount specified in paragraph (a) of this section in the case of—

(1) An employee promoted from an Entry/Developmental band to a Full Performance band (consistent with the pay progression plan established for the Entry/Developmental band);

(2) An employee who was demoted and is then repromoted back to the higher band; or

(3) Employees in other circumstances specified by DHS implementing directives.

(c) An employee receiving a retained rate (*i.e.*, a rate above the maximum of the band) before promotion is entitled to a rate of basic pay after promotion that is at least 8 percent higher than the maximum rate of the employee's current band (except in circumstances specified by DHS implementing directives). The rate of basic pay after promotion may not be less than the minimum rate of the employee's new band rate range or the employee's existing retained rate of basic pay. If the maximum rate of the employee's new band rate range is less than the employee's existing rate of basic pay, the employee will continue to be entitled to the existing rate as a retained rate.

(d) DHS may determine the circumstances under which and the extent to which any locality or special rate supplements are treated as basic pay in applying the promotion increase rules in this section.

### § 9701.354 Setting pay upon demotion.

DHS will issue implementing directives regarding how to set an employee's pay when he or she is demoted. The directives must distinguish between demotions under adverse action procedures (as defined in subpart F of this part) and other demotions (*e.g.*, due to expiration of a temporary promotion or canceling of a promotion

during a new supervisor's probationary period). A reduction in basic pay upon demotion under adverse action procedures may not exceed 10 percent unless a larger reduction is needed to place the employee at the maximum rate of the lower band.

### § 9701.355 Setting pay upon movement to a different occupational cluster.

DHS will issue implementing directives regarding how to set an employee's pay when he or she moves voluntarily or involuntarily to a position in a different occupational cluster, including rules for determining whether such a movement is to a higher or lower band for the purpose of setting pay upon promotion or demotion under §§ 9701.353 and 9701.354, respectively.

### § 9701.356 Pay retention.

(a) Subject to the requirements of this section, DHS will, after coordination with OPM, issue implementing directives regarding the application of pay retention. Pay retention prevents a reduction in basic pay that would otherwise occur by preserving the former rate of basic pay within the employee's new band or by establishing a retained rate that exceeds the maximum rate of the new band.

(b) Pay retention must be based on the employee's rate of basic pay in effect immediately before the action that would otherwise reduce the employee's rate. A retained rate must be compared to the range of rates of basic pay applicable to the employee's position.

(c) In applying § 9701.323 (regarding pay increases provided at the time of a rate range adjustment under § 9701.322), any increase in the rate of basic pay for an employee receiving a retained rate is equal to one-half of the percentage value of any increase in the minimum rate of the employee's band.

### § 9701.357 Miscellaneous.

(a) Except in the case of an employee who does not receive a pay increase under §§ 9701.323 or 9701.335 because of an unacceptable rating of record, an employee's rate of basic pay may not be less than the minimum rate of the employee's band (or the adjusted minimum rate of that band).